IN THE

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1978

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SUPREME COURT, U.S.

NO. 79-5411

LELAND SAMMONS,

Appellant

vs.

STATE OF OHIO,

Appellee

APPEAL FROM THE SUPREME
COURT OF OHIO

JURISDICTIONAL STATEMENT

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OPINION BELOW

The opinion of the Court of Appeals for the First Appellate District of Ohio is unreported and was released on September 20, 1978 (Case No. C-77824). The opinion of the Ohio Supreme Court was released on June 27, 1979 and is reported at 58 Ohio St.2d 460, and at 391 N.E.2d 713. Copies of both opinions are included in the appendix.

JURISDICTION

This proceeding is an appeal from a criminal conviction rendered by the State of Ohio against Leland Sammons in which Sammons challenges the constitutionality of O.R.C. 2919.22(A). The Ohio Supreme Court entered its judgement on June 27, 1979. On July 31, 1979, the Court denied a motion for rehearing. Sammons filed a notice of appeal to this court with the Ohio Supreme Court on August 1, 1979. This appeal is taken under 28 U.S.C. S.1257(2). See Robinson v. Florida, 378 U.S. 153, 84 S.Ct. 1693, 12 L.Ed.2d 771 (1964).

STATUTORY PROVISION INVOLVED

The Child Endangering statute, Pages OHIO REVISED CODE ANN., Title 29, S.2919.22(A), p. 110 (1975), reads as follows:

> (A) No person, being the parent, guardian, person having custody or control, or person in loco parentis of a child under eighteen or a mentally or physically handicapped child under twenty-one years of age, shall create a substantial risk to the health or safety of such child, by violating a duty of care, protection, or support. It is not a violation of a duty of care, protection, or support under this division when the parent, guardian, custodian, or person having custody or control of a child treats the physical or mental illness or defect of such child by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body.

For Sections (B) and (C) of the statute, see App. P. 28.

CONSTITUTIONAL QUESTION PRESENTED

Whether the phrase "duty of care" fails to give fair notice of forbidden conduct and fails to provide standards to police officers and to judges, thereby rendering O.R.C. 2919.22(A) unconstitutional under the Due Process Clause of the Fourteenth Amendment.

STATEMENT OF THE CASE

On August 18, 1977, the State of Ohio filed three first degree misdemeanor charges of Child Endangering, O.R.C. 2919.22(A), against Leland Sammons. On November 17, 1977, a Hamilton County Municipal Court jury found Sammons guilty of all three charges.

On August 9, 1977, Sammons' wife disciplined three of her boys for spilling water in the kitchen. She heated a scissors with matches and burned the children on their buttocks. Sammons was asleep in the room where the children were disciplined. The children testified that he awoke, told his wife to stop, laughed, and went back to sleep. Defense testimony showed that Sammons was under heavy medication for high blood pressure and required a substantial amount of time to fully wake up.

Sammons testified that he chastized his wife the next day. He examined the burns and decided they were not severe. When the boys complained the next day, he put salve on the wounds. However, the doctors who testified for the state said that, when they examined the boys a few days later, one of the burns was infected and that the others were in danger of becoming infected.

Sammons' trial counsel raised the issue of the vagueness of the Child Endangering section. App. p.p. 20-27 . The motion was made orally prior to trial, but since the issue had been discussed at pre-trial conferences, the judge allowed the motion. App. p. 25 . The prosecution made no objection to this procedure. The motion was overruled.

The issue was presented to the First Appellate District in an assignment of error and a proposition of law which challenged the statutes as vague and overbroad under the Fourteenth Amendment. The First District had already held the statute to be constitutional in State v. Smith, C-77473, May 24, 1978, unreported. App. p. p.12-15 . On that authority the assignment of error was overruled. App. p. 8.

Sammons' appellate counsel moved the First District to certify the case to the Ohio Supreme Court as a case conflicting with a decision by the Eleventh Appellate District holding the statute unconstitutional. App. p.p. 16-19. The motion was granted.

In the Ohio Supreme Court, the issue was the same. The Court held that the overbreath issue had not been raised or argued and held that the statute was not void-for-vagueness under the United States Constitution. App. p. p. 1-4.

A notice of appeal to this Court was filed with the Ohio Supreme Court on August 1, 1979. App. p. 6.

SUBSTANTIALITY OF THE FEDERAL QUESTION

In Coates v. Cincinnati, 402 U.S. 611, 99 S.Ct. 1686, 29 L.Ed.2d 214 (1971), Justice Stewart said that conduct that annoys some people does not annoy others; this case shows that how some people raise their children is not how other people do. Certainly, child abuse and neglect are horrible problems which demand solutions so future generations can grow free from the fears past generations knew. But the statute under consideration here is not the solution.

Ohio's Child Endangering statute defines prohibited parental conduct in terms of a violation of a "duty of care, protection, or support." That phrase is not defined by the statute or by any other part of the Ohio Revised Code. The previous section in the Code, O.R.C. 2919.21, forbids failure to support a dependent, but support is not defined. The predecessor to these two sections, O.R.C. 3113.01, spoke in terms of failure to provide the dependent with necessary or proper home, care, food, and clothing; but that section was repealed when the non-support and child endangering statutes were enacted.

Without a definition of the "duty of care, protection, or support," the Child Endangering statute is unconstitutionally vague. In Papachristou v. Jacksonville, 405 U.S. 156, 92 S.Ct. 839, 31 L.Ed.2d 110 (1972), this Court gave two tests under which a statute is void for vagueness. The first test is whether the statute fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden. The second test is whether the statute provides any standards for police officers and judges to follow when making arrests and judging guilt.

The statute in question is void under both these tests. Under the first test, the phrase duty of care (which was the phrase used in the complaints in this case) is vague because there is no uniform parental duty to which all parents in our society subscribe; practices vary widely across the broad spectrum of American society. Studies show that working class or blue collar parents tend to emphasize conformity to external standards of orderliness, obediance, and respect for adults, and are more likely to use force as a means of punishment. In contrast, middle class or white collar parents tend to emphasize self-direction, individualism, and realization of potential, and are more likely to use verbal interaction as punishment. Kohn, Melvin L. Class and Conformity --A Study in Values, The University of Chicago Press, Second Edition (1977); Geogas, Victor and Nye, F. Ivan, "Sex and Class Differences in Parent-Child Interaction: A Test of Kohn's Hypothesis," 36 J. of Mar. and Fam. 742 (1974).

While these studies did not examine the urban poor, the correlation found in these studies between parental values and the particular circumstances of life in the parents' social class suggests that the harsh conditions of poverty result in harsh attitudes and practices of urban poor parents toward their children. See Jeffers, Camille Living Poor, Ann Arbor Publishers, Ann Arbor, Michigan (1967) pp. 123f.

The second test under Papachriston is whether the statute provides standards for police and judges. Given the lack of definition of duty of care, there are no such standards. The Mershon Center at Ohio State University conducted a study of child abuse and neglect programs across the country. In that study, they interviewed social workers, police officers and judges. 56 percent of the social workers and 64 percent of the police departments said they agreed with the statement that "It is difficult to say what is and what is not child mistreatment." An even higher proportion of the judges and physicians indicated agreement with the statement. Nagi, Saad Z. "Child Abuse and Neglect Programs: A National Overview," 4 Children Today, 13, 16 (1975). Given this

very police and judges who enforce such laws, it is clear that the absence of specific standards in a child abuse statute leaves it void for vagueness.

The Supreme Courts of Florida and Illinois have upheld the constitutionality of similar statutes. See People v. Vandiver, 51 Ill.2d 525, 283 N.E.2d 681 (1971), and State v. Joyce, 361 So.2d 406 (1978). The Illinois statute forbade willfully causing the life of a child to be endangered; the Florida statute forbade the willful or culpably negligent deprivation of necessary food, clothing, shelter, or medical treatment. The crucial fact is that both these statutes forbade willful or culpably negligent action. The Florida Supreme Court had earlier ruled unconstitutional a statute which made it an offense to negligently deprive a child of necessary food, clothing, shelter, or medical treatment. State v. Winters, 346 So.2d 991 (1977). The Ohio statute is like the statute in Winters case. There is no element of scienter to save the vague character of the language of the statute.

In U.S. v. National Dairy Products Corp., 372 U.S. 29, 83 S.Ct. 594, 9 L.Ed.2d 561 (1963), this Court held that a statute challenged for vagueness should be examined not only on its face but also in light of the conduct to which it was applied. Therefore, this statute should be examined in terms of parental discipline and medical care. Would a parent who was too poor to afford salves and wound dressings, who was too poor to afford the disinfectants necessary to keep his house clean and free from germs be guilty under the Ohio statute? Would a parent who inspected a burn or cut and decided it was not serious but was subsequently proven wrong be guilty under the statute? Would a parent who wanted his boys to be strong men and not sissies and therefore told them not to worry about the burns or cuts be guilty under the statute? Would a parent who spanked a child so hard it raised blisters be guilty under the statute?

Absent a requirement that a parent knew the cut or burn was infected or knew that he was raising blisters by spanking so hard, the Ohio statute does not give an ordinary person fair notice of which conduct is forbidden and does not provide standards for police and judges to make arrests and judge guilt. For this reason, this case raises a substantial question under the federal constitution, and this Court should allow the case to be heard on the merits.

Respectfully submitted,

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